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Administration of justice at the United Nations

Report of the Fifth Committee

Rapporteur: Mr. Patrick A. **Chuasoto** (Philippines)

I. Introduction

1. At its 2nd plenary meeting, on 19 September 2008, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-third session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee for its consideration and to the Sixth Committee, in the light of General Assembly resolution 62/228 and Assembly decision 62/519.

2. The Fifth Committee considered the item at its 19th and 28th meetings, on 20 November and 23 December 2008. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/63/SR.19 and 28).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the administration of justice (A/62/782);

(b) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/62/7/Add.39);

(c) Report of the Secretary-General on the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel (A/63/211);

(d) Report of the Secretary-General on the activities of the Office of the Ombudsman (A/63/283);

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(e) Report of the Secretary-General on the administration of justice at the United Nations (A/63/314);

(f) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/63/545);

(g) Note by the Secretary-General on the administration of justice: further information requested by the General Assembly (A/62/748 and Corr.1);

(h) Letter dated 29 April 2008 from the President of the General Assembly to the Chairman of the Fifth Committee (A/C.5/62/27);

(i) Letter dated 18 July 2008 from the President of the Administrative Tribunal to the President of the General Assembly (A/63/253);

(j) Letter dated 27 October 2008 from the President of the General Assembly to the Chairman of the Fifth Committee (A/C.5/63/9).

II. Consideration of draft resolution A/C.5/63/L.17

4. At its 28th meeting, on 23 December, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/63/L.17), submitted by the Chairman of the Committee on the basis of informal consultations coordinated by the representative of the Netherlands.

5. Also at its 28th meeting, the Committee adopted draft resolution A/C.5/63/L.17 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April and 62/228 of 22 December 2007, and its decisions 62/519 of 6 December 2007 and 63/531 of 11 December 2008,

Reaffirming the decision in paragraph 4 of its resolution 61/261 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike,

Having considered the reports of the Secretary-General on the administration of justice at the United Nations,[1] on the activities of the Office of the Ombudsman[2] and on the administration of justice in the Secretariat, including the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel,[3] the note by the Secretary-General on the administration of justice, including further information requested by the General Assembly,[4] the letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee,[5] the letter dated 27 October 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee[6] and the related reports of the Advisory Committee on Administrative and Budgetary Questions,[7]

1. *Takes note* of the reports of the Secretary-General on the administration of justice at the United Nations,[1] on the activities of the Office of the Ombudsman[2] and on the administration of justice in the Secretariat, including the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel,[3] the note by the Secretary-General on the administration of justice, including further information requested by the General Assembly,[4] the letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee,[5] and the letter dated 27 October 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee;[6]

2. *Reaffirms* its resolutions 61/261 and 62/228 on the establishment of the new system of administration of justice;

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[1] A/63/314 and A/62/782.
[2] A/63/283.
[3] A/63/211.
[4] A/62/748 and Corr.1.
[5] A/C.5/62/27.
[6] A/C.5/63/9.
[7] A/62/7/Add.39 and A/63/545.

3. *Expresses its appreciation* to staff members of the United Nations system who have participated in the system of administration of justice, including the joint disciplinary committees and the joint appeals boards;

4. *Also expresses its appreciation* to the former and present members and staff of the United Nations Administrative Tribunal for their work;

5. *Endorses* the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions,[7] subject to the provisions of the present resolution;

I
New system of administration of justice

6. *Regrets* the delays in the filling of posts established by the General Assembly in its resolution 62/228, and requests the Secretary-General to fill the posts as a matter of priority, in particular the post of the Executive Director of the Office of Administration of Justice;

7. *Decides* that interns, type II gratis personnel and volunteers (other than United Nations Volunteers) shall have the possibility of asking for an appropriate management evaluation but shall not have access to the United Nations Dispute Tribunal or to the United Nations Appeals Tribunal;

8. *Recalls* paragraphs 7 and 9 of its resolution 62/228 and its decision 63/531 to establish an ad hoc committee, and decides to revert to the issue of the scope of the system of administration of justice at its sixty-fifth session, with a view to ensuring that effective remedies are available to all categories of United Nations personnel, with due consideration given to the types of recourse that are the most appropriate to that end;

9. *Commends* the role that volunteers have traditionally played in representing employees in the dispute resolution process under the existing system;

10. *Notes* that some current and former United Nations staff have been reluctant to represent their fellow staff members in the dispute resolution process because of the burden that such service would place on them;

11. *Requests* the Secretary-General to provide incentives to encourage current and former staff to assist staff members in the dispute resolution process;

12. *Decides* that the role of professional legal staff in the Office of Staff Legal Assistance shall be to assist staff members and their volunteer representatives in processing claims through the formal system of administration of justice;

13. *Recalls* paragraph 13 of its resolution 62/228, in which it decided to establish the Office of Staff Legal Assistance to succeed the Panel of Counsel, and decides to revert to the mandate and functioning of that Office, including the participation of current and former staff as volunteers, at its sixty-fifth session;

14. *Reiterates* paragraph 24 of its resolution 61/261, and requests the Secretary-General to report at its sixty-fifth session on proposals for a staff-funded scheme in the Organization that would provide legal assistance and support to staff;

15. *Decides* to revert to the issue of the possibility of staff associations filing applications before the Dispute Tribunal at its sixty-fifth session;

16. *Recalls* paragraph 55 of the report of the Secretary-General,[8] and requests the Secretary-General to work with staff associations to develop incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance, including by providing volunteer professional legal counsel;

II
Informal system

17. *Welcomes* the steps taken by the Office of the Ombudsman towards the implementation of the new informal system as set out in resolution 62/228;

18. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

19. *Decides* that all persons who have access to the Office of the Ombudsman under the current system shall also have access to the new informal system;

20. *Requests* the Secretary-General to consider and make proposals at its sixty-fifth session for providing incentives for employees seeking dispute resolution to submit disputes to mediation under the auspices of the Office of the Ombudsman;

21. *Recalls* the request contained in paragraph 67 (a) of its resolution 62/228 for the Secretary-General to report to it on the revised terms of reference for the Ombudsman, and requests him to ensure that the terms of reference and guidelines for the Mediation Division are promulgated as soon as possible;

22. *Requests* the Secretary-General to take advantage of existing mechanisms for conflict resolution and mediation, as deemed useful and appropriate, in order to facilitate a renewed dialogue between staff and management;

23. *Welcomes* the intention of the Secretary-General to issue a joint report in 2009 for the entities covered by the integrated Office of the Ombudsman, taking into consideration the different legislative bodies that will receive the report;

24. *Notes* section V, on systemic issues, of the report of the Secretary-General on the activities of the Ombudsman,[2] and emphasizes that the role of the Ombudsman is to report on broad systemic issues that he or she identifies, as well as issues that are brought to his or her attention, in order to promote greater harmony in the workplace;

25. *Requests* the Secretary-General to report to the General Assembly at its sixty-fifth session on specific measures taken to address systemic issues in the context of human resources management;

III
Formal system

26. *Decides* to adopt the statutes of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal, as set out in the annexes to the present resolution;

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[8] A/63/314.

27. *Also decides* that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be operational as of 1 July 2009;

28. *Affirms* that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;

29. *Notes* article 7.1 of the statute of the United Nations Dispute Tribunal and article 6.1 of the statute of the United Nations Appeals Tribunal, requests the Secretary-General to submit, for approval, the rules of procedure of the Tribunals as soon as possible but no later than at its sixty-fourth session, and decides that until then the Tribunals may apply the rules on a provisional basis;

30. *Approves* the proposed conditions of service of the judges of the United Nations Dispute Tribunal and United Nations Appeals Tribunal, as set out in the report of the Secretary-General;[8]

31. *Decides* that the conditions of service referred to in paragraph 30 above shall be treated separately from the conditions of service of other judicial appointments in the United Nations system;

32. *Also decides* to carry out a review of the statutes of the Tribunals, in the light of experience gained, including on the efficiency of the overall functioning of the Tribunals, in particular regarding the number of judges and the panels of the United Nations Dispute Tribunal, at its sixty-fifth session;

33. *Recalls* paragraph 49 of its resolution 62/228, and requests the Secretary-General to submit a new detailed proposal at its sixty-fifth session, including a variety of options for delegation of authority for disciplinary measures, with full costing and a cost-benefit analysis, taking into account the recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;[9]

34. *Also recalls* paragraph 23 of the report of the Advisory Committee on Administrative and Budgetary Questions,[9] and requests the Secretary-General to further clarify the role of the Department of Management in the evaluation process, in order to ensure the appropriate independence of the Management Evaluation Unit, and to report thereon at its sixty-fifth session;

IV
Transitional measures

35. *Requests* the Secretary-General to ensure that the current formal system of administration of justice continues to function, as appropriate, until the completion of the transition to the new system;

36. *Recalls* paragraph 57 of its resolution 62/228, and in that context urges the Secretary-General to take the necessary measures to reduce the existing backlog;

37. *Notes* the refusal of some staff associations to participate in the Joint Appeals Board and the Joint Disciplinary Committee, and authorizes the Secretary-General to obtain the assistance of other staff associations, including staff associations of the funds and programmes and at the various duty stations, in

[9] A/63/545.

identifying staff members willing to serve on the Joint Appeals Board and/or Joint Disciplinary Committee, in order to ensure that the current system continues to operate in an effective and timely manner;

38. *Decides* to abolish, as of 1 July 2009, the joint appeals boards, the joint disciplinary committees and the disciplinary committees of the separately administered funds and programmes;

39. *Also decides* that the terms of the members of the United Nations Administrative Tribunal that expire on 31 December 2008 shall be extended until 31 December 2009;

40. *Authorizes* honorariums for the members of the United Nations Administrative Tribunal as of 1 January 2009, in the amount of 1,500 dollars per case (1,000 dollars for the drafter and 250 dollars each for the other two signatories);

41. *Acknowledges* the need to clear the existing backlog of cases as soon as possible, requests the Secretary-General to coordinate with the United Nations Administrative Tribunal in order to hold Administrative Tribunal sessions in 2009 earlier than scheduled, and authorizes extension of the sessions by up to four weeks;

42. *Decides* that the United Nations Administrative Tribunal will not accept new cases as of 1 July 2009;

43. *Also decides* to abolish the United Nations Administrative Tribunal as of 31 December 2009;

44. *Further decides* that all cases pending before the joint appeals boards, the joint disciplinary committees and the disciplinary committees be transferred, as from the abolishment of those bodies, to the United Nations Dispute Tribunal;

45. *Decides* that all cases from the United Nations and the separately administered funds and programmes pending before the United Nations Administrative Tribunal be transferred to the United Nations Dispute Tribunal, as from the abolishment of the United Nations Administrative Tribunal;

46. *Also decides* that pending cases from the United Nations Joint Staff Pension Fund and from organizations that have concluded a special agreement with the Secretary-General, according to article 2, paragraph 10, of the statute of the United Nations Appeals Tribunal, or article 2, paragraph 7, of the statute of the United Nations Dispute Tribunal, will be transferred to the United Nations Appeals Tribunal or the United Nations Dispute Tribunal, as appropriate, as from the abolishment of the United Nations Administrative Tribunal;

47. *Invites* the United Nations Administrative Tribunal to consider cases from organizations that have concluded a special agreement under article 14 of the statute of the Tribunal as a matter of priority, with a view to concluding those cases before the abolishment of the Tribunal;

48. *Decides* that three ad litem judges shall be appointed by the General Assembly to the United Nations Dispute Tribunal;

49. *Stresses* that the three ad litem judges appointed to the United Nations Dispute Tribunal shall have all the powers conferred on the permanent judges of the Tribunal and be appointed only for a period of one year as from 1 July 2009;

50. *Requests* the Secretary-General to ensure that all entities that utilize the United Nations Administrative Tribunal pursuant to article 14 of the statute of the Tribunal are notified that the Tribunal will cease to accept new cases as from 1 July 2009, and that if those entities (with the exception of the United Nations Joint Staff Pension Fund) wish to continue to participate in the Organization's internal justice system it will be necessary to negotiate new special agreements;

51. *Invites* the United Nations Joint Staff Pension Board to consider the new system of administration of justice as approved by the General Assembly;

V
Financial implications and cost-sharing arrangements

52. *Recalls* paragraphs 62 and 63 of its resolution 62/228, and requests the Secretary-General to conclude cost-sharing arrangements, based on headcount, with the relevant funds and programmes by 30 June 2009 and to report thereon;

53. *Requests* the Secretary-General to make every effort to meet any additional requirements relating to the decisions in section IV above within the existing appropriation and to report on the actual costs in the context of the second performance report for the biennium 2008-2009;

VI
Other issues

54. *Recalls* paragraph 14 of its resolution 59/283, and requests the Secretary-General, in accordance with existing rules and regulations, to pursue the financial liability of managers when the situation justifies such action;

55. *Also recalls* paragraph 69 of its resolution 62/228, reiterates its request to the Secretary-General to ensure that information concerning the details of the new system of administration of justice, in particular options for recourse, is readily accessible by all persons covered under the new system, and stresses that the information should clearly explain the roles of the various elements in the new system, as well as the process for bringing complaints;

56. *Reiterates its request* to the Secretary-General to provide the terms of reference of the Registries of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal as soon as possible;

57. *Decides* that for future appointments the Internal Justice Council shall not recommend more than one candidate from any one Member State for a judgeship on the United Nations Dispute Tribunal, or more than one candidate from any one Member State for a judgeship on the United Nations Appeals Tribunal;

58. *Invites* Member States when electing judges to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to take due consideration of geographical distribution and gender balance;

59. *Requests* the Secretary-General to conduct a review of the new system of administration of justice and to report thereon at its sixty-fifth session;

60. *Decides* that the sub-item entitled "Appointment of members of the United Nations Administrative Tribunal" of the item entitled "Appointments to fill

vacancies in subsidiary organs and other appointments" shall be deleted from its agenda;

61. *Approves* revision of staff regulations 10.1 and 11.1, as proposed in paragraph 80 of the report of the Secretary-General,[8] and decides to abolish staff regulations 10.2 and 11.2, with effect from the implementation of the new system of administration of justice on 1 July 2009.

Annex I

Statute of the United Nations Tribunal

Article 1

A tribunal is established by the present statute as the first instance of the two-tier formal system of administration of justice, to be known as the United Nations Dispute Tribunal.

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3, paragraph 1, of the present statute, against the Secretary-General, as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The words "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-observance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal's decision on such an application shall not be subject to appeal.

3. The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.

4. The Tribunal shall be competent to permit an individual who is entitled to appeal the same administrative decision under article 2, paragraph 1 (a), to intervene in a matter brought by another staff member under article 2, paragraph 1 (a).

5. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the

Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the Dispute Tribunal's jurisdiction, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Dispute Tribunal and be responsible for the payment of any compensation awarded by the Dispute Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Dispute Tribunal and concerning its sharing of the expenses of the Dispute Tribunal. Such special agreement shall also contain other provisions required for the Dispute Tribunal to carry out its functions vis-à-vis the agency, organization or entity.

6. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

7. As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgement on:

(a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme;

(b) A case transferred to it from the United Nations Administrative Tribunal;

as decided by the General Assembly.

Article 3

1. An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.

2. A request for a suspension of action under article 2, paragraph 2, of the present statute may be filed by an individual, as provided in article 3, paragraph 1, of the present statute.

Article 4

1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years. A current or former judge of the Appeals Tribunal shall not be eligible to serve in the Dispute Tribunal.

5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

6. A former judge of the Dispute Tribunal shall not be eligible for any subsequent appointment within the United Nations, except another judicial post, for a period of five years following his or her term in office.

7. The Dispute Tribunal shall elect a President.

8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Dispute Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.

10. A judge of the Dispute Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 5

The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.

Article 6

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions at other duty stations.

2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.

3. The expenses of the Dispute Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.

Article 7

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules shall include provisions concerning:

(a) Organization of work;

(b) Presentation of submissions and the procedure to be followed in respect thereto;

(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(d) Intervention by persons not party to the case whose rights may be affected by the judgement;

(e) Oral hearings;

(f) Publication of judgements;

(g) Functions of the Registries;

(h) Procedure for summary dismissal;

(i) Evidentiary procedure;

(j) Suspension of contested administrative decisions;

(k) Procedure for the recusal of judges;

(l) Other matters relating to the functioning of the Dispute Tribunal.

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following applicable deadline:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days after the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days after the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days after the applicant's receipt of the administrative decision;

(iii) The deadline provided for in subparagraphs (i) and (ii) above shall be extended to one year if the application is filed by any person making claims in the name of an incapacitated or deceased staff member of the United Nations,

including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(iv) Where the parties have sought mediation of their dispute within the deadline for the filing of an application under article 8, paragraph 1 (d), but did not reach an agreement, the application shall be receivable if filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

2. An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding article 8, paragraph 3, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

5. The filing of an application shall not have the effect of suspending the implementation of the contested administrative decision.

6. An application and other submissions shall be filed in any of the official languages of the United Nations.

Article 9

1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.

2. The Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 10

1. The Dispute Tribunal may suspend proceedings in a case at the request of the parties for a time to be specified by it in writing.

2. At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

3. At any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation. With the consent of the parties, it shall suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties request otherwise.

4. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General, remand the case for institution or correction of the required procedure, which, in any case, should not exceed three months. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay to the applicant for such loss as may have been caused by such procedural delay, which is not to exceed the equivalent of three months' net base salary.

5. As part of its judgement, the Dispute Tribunal may order one or more of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);

(b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

6. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before the Tribunal, it may award costs against that party.

7. The Dispute Tribunal shall not award exemplary or punitive damages.

8. The Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

9. Cases before the Dispute Tribunal shall normally be considered by a single judge. However, the President of the Appeals Tribunal may, within seven calendar days of a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal when necessary by reason of the particular complexity or importance of the case. Cases referred to a panel of three judges shall be decided by a majority vote.

Article 11

1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

2. The deliberations of the Dispute Tribunal shall be confidential.

3. The judgement of the Dispute Tribunal shall be binding upon the parties, but is subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

5. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the application was submitted unless he or she requests a copy in another of the official languages of the United Nations.

6. The judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 12

1. Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

4. Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

Article 13

The present statute may be amended by decision of the General Assembly.

Annex II

Statute of the United Nations Appeals Tribunal

Article 1

A tribunal is established by the present statute as the second instance of the two-tier formal system of administration of justice, to be known as the United Nations Appeals Tribunal.

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Erred on a question of law;

(d) Committed an error in procedure, such as to affect the decision of the case; or

(e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

2. An appeal may be filed by either party (i.e., the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgement of the Dispute Tribunal.

3. The Appeals Tribunal may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present statute.

4. In cases of appeal under article 2, paragraph 1 (e), the Appeals Tribunal shall be competent to:

(a) Affirm, reverse or modify findings of fact of the Dispute Tribunal on the basis of substantial evidence in the written record; or

(b) Remand the case to the Dispute Tribunal for additional factual findings, subject to article 2, paragraph 5, if it determines that further findings of fact are necessary.

5. In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken

without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

6. Where the Appeals Tribunal remands a case to the Dispute Tribunal, it may order that the case be considered by a different judge of the Dispute Tribunal.

7. For the purposes of this article, "written record" means anything that has been entered in the formal record of the Dispute Tribunal, including submissions, evidence, testimony, motions, objections, rulings and the judgement, and any evidence received in accordance with article 2, paragraph 5, of the present statute.

8. In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

9. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.

In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

10. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the Appeals Tribunal's jurisdiction, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals

Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions vis-a-vis the agency, international organization or entity. Such special agreement may only be concluded if the agency, international organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, international organization or entity.

Article 3

1. The Appeals Tribunal shall be composed of seven judges.

2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal.

5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his or her term in office.

7. The Appeals Tribunal shall elect a President and two Vice-Presidents.

8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Appeals Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.

10. A judge of the Appeals Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 4

1. The Appeals Tribunal shall perform its functions in New York. However, it may decide to hold sessions in Geneva or Nairobi as required by its caseload.

2. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.

3. Extraordinary sessions may be convoked by the President, as required by the caseload.

Article 5

1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions in Geneva and Nairobi.

2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff as necessary.

3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.

Article 6

1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(b) Composition of the Tribunal for its sessions;

(c) Organization of work;

(d) Presentation of submissions and the procedure to be followed in respect thereto;

(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(f) Intervention by persons not party to the case whose rights may have been affected by the judgement of the Dispute Tribunal and whose rights might therefore also be affected by the judgement of the Appeals Tribunal;

(g) The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal;

(h) Oral proceedings;

(i) Publication of judgements;

(j) Functions of the Registry;

(k) Procedure for the recusal of judges;

(l) Other matters relating to the functioning of the Tribunal.

Article 7

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;

(b) The appellant is eligible to file the appeal, pursuant to article 2, paragraph 2, of the present statute; and

(c) The appeal is filed within 45 days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 below, within the period specified by the Appeals Tribunal.

2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within 90 days from the receipt of the Board's decision.

3. The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding article 7, paragraph 3, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.

5. The filing of appeals shall have the effect of suspending the execution of the judgement contested.

6. An appeal and other submissions shall be filed in any of the official languages of the United Nations.

Article 8

1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute.

2. The Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose.

3. The judges assigned to a case will determine whether to hold oral proceedings.

4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 9

1. The Appeals Tribunal may order one or more of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the recission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);

(b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Appeals Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.

3. The Appeals Tribunal shall not award exemplary or punitive damages.

4. At any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal.

5. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 10

1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and shall be decided by a majority vote.

2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Appeals Tribunal. A quorum in such cases shall be five judges.

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

4. The deliberations of the Appeals Tribunal shall be confidential.

5. The judgements of the Appeals Tribunal shall be binding upon the parties.

6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.

7. The judgements of the Appeals Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

8. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the appeal was submitted unless he or she requests a copy in another of the official languages of the United Nations.

9. The judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 11

1. Subject to article 2, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within 30 days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.

4. Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

Article 12

The present statute may be amended by decision of the General Assembly.